

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHAHZAD NAWAZ,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

ORDER

19-CV-1727 (MKB) (CLP)

MARGO K. BRODIE, United States District Judge:

Plaintiff Shahzad Nawaz commenced the above-captioned action on February 22, 2019 in New York Supreme Court, Queens County, against Defendant State Farm Fire and Casualty Company (“State Farm”). (Compl., Docket Entry No. 1-2.) Defendant removed the action to this Court on March 26, 2019. (Notice of Removal, Docket Entry No. 1.) Plaintiff asserts claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud, and seeks a declaratory judgment pursuant to Rule 3001 of the New York Civil Practice Law and Rules that Defendant is required to pay for damages to Plaintiff’s property pursuant to an insurance policy. (See Compl. ¶¶ 106, 117–20.) On June 25, 2019, Defendant moved to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Def. Mot. to Dismiss (“Def. Mot.”), Docket Entry No. 13; Mem in Supp. of Def. Mot., Docket Entry No. 15.) Plaintiff opposed the motion. (Pl. Opp’n to Def. Mot., Docket Entry No. 19.) By Order dated August 29, 2019, the Court referred the motion to Magistrate Judge Cheryl L. Pollack for a report and recommendation. (Order dated Aug. 29, 2019.)

By report and recommendation dated January 30, 2020, Judge Pollack recommended that the Court grant Defendant’s motion to dismiss the Complaint (the “R&R”). (See R&R 1.) Judge

Pollack found that Plaintiff's breach of contract claim is untimely but recommended that the Court grant Plaintiff leave to file an amended complaint if Plaintiff can allege misleading statements made by Defendant between June of 2013 and June of 2015. (*Id.* at. 12.) Judge Pollack also recommended that the Court dismiss Plaintiff's breach of the implied covenant of good faith and fair dealing claim because it is based on the same facts as his breach of contract claim, and dismiss his fraud claim for failure to state a claim. (*Id.* at 13.)

No party has opposed the R&R and the time for doing so has past.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); *see also Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R, and finding no clear error, adopts the R&R

in its entirety pursuant to 28 U.S.C. § 636(b)(1). Accordingly, the Court dismisses the Complaint and grants Plaintiff leave to file an amended complaint within thirty (30) days of the date of this Memorandum and Order. If Plaintiff fails to file an amended complaint within thirty (30) days, the Court will dismiss this action.

Dated: February 27, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge